IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Tr.Appeal(C).No. 7 of 2007()

AGAINST THE JUDGEMENT/ORDER IN TPC.1/2007
.....

APPELLANT/RESPONDENT

SHRI. SANKARAN NAIR, ANJALI BHAVAN,
VAKATHANAM VILLAGE, VAKATHANAM KARA,
VAKATHANAM P.O., CHANGANASSERY TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.DINESH R.SHENOY
SRI.V.V.UNNIKRISHNAN

RESPONDENTS: PETITIONER

E.VIJAYALEKSHMI, D/O LATE K.NARAYANAN
NAIR, KUNIYIL HOUSE, THIRUVANGADU VILLAGE,
THIRUVANGADU P.O., THALASSERY TALUK,
KANNUR DISTRICT.

BY ADV.SRI.C.P.PEETHAMBARAN

THIS TRANSFER APPEAL(CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & T.R.RAMACHANDRAN NAIR,JJ.

Transfer Appeal No. 7 of 2007

Dated this the 22nd day of June, 2007

JUDGMENT

Kurian Joseph,J.

Whether a petition for restitution of conjugal rights filed by one party before a Family Court can be directed to be transferred to another court where a maintenance case is pending between the parties, in exercise of the power under Section 21A(2)(b) of the Hindu Marriage Act, 1955, is the question that arises for consideration in this case. The respondent/wife filed M.C.No.294/2005 on the file of the Family Court, Kannur, caliming maintenance from the petitioner. During the pendency of the said petition the appellant/husband filed O.P.No.723/2006 before the Family Court, Ettumanoor, for restitution of conjugal rights. The respondent/wife thereafter approached this court praying for transfer of O.P.No.723/2006 on the file of the Family Court, Ettumanoor to the Family Court, Kannur to be tried along with M.C.No.294/2005. The learned single Judge allowed the petition and passed the following order:-

"Invoking the power under Section 21A(2)(b) of the Hindu Marriage Act, I transfer O.P.723/06 from the file of the Family Court, Ettumanoor to the file of the Family Court, Kannur to be dealt with along with M.C.No.294/05, pending before that court."

The appeal is filed aggrieved by the said order, by the husband.

2. Section 21A of the Hindu Marriage Act reads as follows:-

"21-A. Power to transfer petitions in certain cases. --

(1) Where --

(a) a petition under this Act has been presented to a district Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district Court or in a different district Court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies, --

(a) if the petitions are presented to the same district Court, both the petitions shall be tried and heard together by that district Court;

(b) if the petitions are presented to different district Courts, the petition presented later shall be transferred to the district Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.

> (3) In a case where clause (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908, to transfer any suit or proceeding from the district Court in which the later petition has been presented to the district Court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code."

The pre-condition for exercise of power of transfer under Section 21-A of the Act is the pendency of a petition under Section 10 of the Act for judicial separation or a petition for decree of divorce under Section 13 of the Act before one District Court (presently Family Court), And a petition either under Section 10 or under Section 13 of the Act on any ground either before the same District Court or a District Court in the same State or a different State. Only in such situations, an order can be passed transferring the petitions for joint trial, if pending before the same District Court or transferring the case to the court where the case earlier in point of time was filed for joint trial. The mere pendency of various matrimonial disputes between the parties in different courts or in the same court will not be sufficient to have either joint trial or transfer to the same court. Only in a situation where a petition under Section 10 for judicial separation or under

Section 13 for a decree of divorce filed by one party in one District Court and the petition/s for the same relief filed by the other party to the marriage either in the same court or in a different District Court (Family Court) are pending, the power under Section 21A(2)(b) can be exercised either for joint trial or for transfer and joint trial.

3. While the appeal was pending before us the parties have entered a compromise with regard to M.C.No.294/2005 for maintenance pending before the Family Court, Kannur and O.P.No.723/2006 for restitution of conjugal rights pending before the Family Court, Ettumanoor and they have filed I.A.No.1346/2006. We have recorded the compromise in the said application. The parties have agreed to compromise the disputes whereby the appellant/husband will pay maintenance at the rate of Rs.1250/- per month. They also agreed that the cases can be struck off from the files. However, this detailed judgment is necessitated only to set right the legal position.

4. Accordingly we set aside the order dated 8-3-2007 in Tr.P(C)No.1/2007. This appeal is allowed in terms of the

compromise as recorded in I.A.No.1346/2007. The said I.A will form part of the decree. M.C.No.294/2005 on the file of the Family Court, Kannur and O.P.No.723/2006 on the file of the Family Court, Ettumanoor, shall stand struck off.

(KURIAN JOSEPH, JUDGE)

(T.R.RAMACHANDRAN NAIR, JUDGE)

ahg.

"C.R."

KURIAN JOSEPH &
T.R.RAMACHANDRAN NAIR,JJ.

Transfer Appeal No. 7/2007

JUDGMENT

22nd June, 2007